

REMARKS/ARGUMENTS

Claims 1-13 are pending in the present application and are subject to a restriction requirement. The examiner has required restriction to one of the following groups of claims under 35 USC § 121:

Group I, including claims 1-3 and 5-7, directed to a polynucleotide, vectors, and host cells;

Group II, including claim 4, directed to a polypeptide;

Group III, including claim 8, directed to a transgenic plant; and

Group IV, including claims 9-13, directed to a method of using hydroperoxide lyase for the production of green note compounds.

Applicant elects Group I with traverse.

The Examiner takes the position that the different groups of claims set forth in the Official Action are either not related or are related as product and process and therefore, restriction is applicable. However, the Examiner's position that the inventions are distinct is based only on an allegation that the different inventions can be used separately from one another. M.P.E.P. 802.01 points out that a restriction requirement is proper only if the different inventions are truly independent, which means that there is no disclosed relationship between the subjects disclosed, that they are unconnected in design, operation or effect, and they must be capable of separate manufacture, use or sale and are patentable over each other. M.P.E.P. 803 requires that it must be demonstrated that the two or more claimed inventions have no disclosed relationship. Only then is restriction required.

The Examiner has stated that the inventions of groups I and IV are not capable of use together, and they have different modes of operation. However, the Examiner has not

Application No.: 10/718,265

demonstrated how a transgenic plant comprising the polynucleotide and/or vector of the invention is not used together with the polynucleotide or vector of Group I. It is respectfully submitted that the examiner has not met his burden of showing distinctness of groups I and IV, and therefore, the restriction of group IV should be withdrawn, and claim 8 rejoined with Group I.

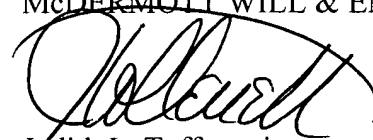
Accordingly, the restriction requirement is respectfully traversed in part. It is respectfully requested that Group IV (claim 8) be rejoined in this application.

Entry of the Response to the Restriction Requirement and favorable consideration are respectfully believed to be in order and respectfully requested. However, if any issues remain outstanding, the Examiner is respectfully requested to contact the undersigned so the prosecution may be expedited.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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